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PUBLIC SERVICE
COMMISSION

November 14, 2005

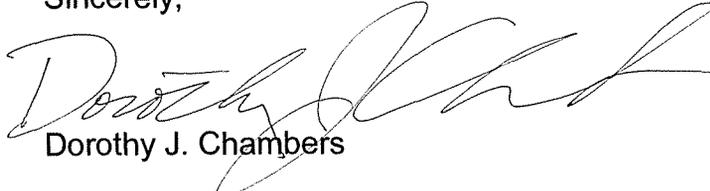
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: Petition to Establish Docket to Consider Amendments to Interconnection
Agreements Resulting from Change of Law, Kentucky Broadband Act
KPSC 2004-00501

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10)
copies of BellSouth's Motion to Enforce the Commission's April 29, 2005 Order as to
Cinergy Communications Company and SouthEast Telephone, Inc.

Sincerely,



Dorothy J. Chambers

Enclosures

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

NOV 15 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:

PETITION TO ESTABLISH DOCKET)
TO CONSIDER AMENDMENTS TO)
INTERCONNECTION AGREEMENTS) CASE NO. 2004-00501
RESULTING FROM CHANGE OF LAW,)
KENTUCKY BROADBAND ACT)

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO ENFORCE THE COMMISSION'S APRIL 29, 2005 ORDER
AS TO CINERGY COMMUNICATIONS COMPANY
AND SOUTHEAST TELEPHONE, INC.

INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, hereby moves to enforce the Commission's April 29, 2005 Order as to Cinergy Communications Company ("Cinergy") and SouthEast Telephone, Inc. ("SouthEast"). As discussed herein, the Commission should order that the amendment, attached hereto as Exhibits 1 and 2, respectively, to each company's Interconnection Agreement, is deemed executed, with an effective date of May 19, 2005.

ARGUMENT

On April 29, 2005, this Commission held that it could not require BellSouth to provide DSL over UNE-P where a CLEC, such as Cinergy and SouthEast, was using that same facility to provide voice service to that customer. In that same April 29, 2005 Order, this Commission ordered all parties, including Cinergy and SouthEast, to submit within

twenty days, that is by May 19, 2005, an amendment to their Interconnection Agreements in accordance with the Commission's Order. Cinergy and SouthEast have been and continue to be in violation of the Commission's April 29, 2005 Order. The Commission should order the amendment to those Agreements deemed executed, effective May 19, 2005.

The Commission's April 29, 2005 Order was concise, clear, and without equivocation. Cinergy, SouthEast and the other CLECs with Interconnection Agreements that required BellSouth to provide DSL over UNE-P were required by the Commission's April 29, 2005 Order to execute within twenty (20) days an amendment that no longer required BellSouth to provide DSL over UNE-P.¹ Cinergy sought rehearing from the Commission's April 29, 2005 Order and by Order dated June 13, 2005, the Commission denied Cinergy's request for rehearing. Neither Cinergy nor SouthEast have appealed, nor has either sought a stay from these now final Orders.

More than two months after this Commission's April 29, 2005 Order, Aero Communications, LLC ("Aero"), Cinergy and SouthEast still had not signed an amendment. As a result, on July 27, 2005, BellSouth filed a Motion To Enforce the Commission's Order as to Aero. Aero now has executed an Amendment to its Interconnection Agreement that complies with this Commission's April 29, 2005 Order. See footnote 1. As BellSouth explained in its Motion To Enforce as to Aero, BellSouth did not include Cinergy and SouthEast in its July 27, 2005 Motion to Enforce because at that time those two CLECs were engaged in negotiations with BellSouth regarding certain issues in connection with the

¹ BellSouth filed an amendment with the Commission as Exhibit B to its initial Petition on December 10, 2004. This Amendment has been executed by Momentum, EveryCall and ITC^DeltaCom. Aero Communications also now has executed a compliant amendment by executing a TRRO amendment that completely replaces Attachment 2, thus eliminating the offending DSL over UNE-P language.

April 29, 2005 Order, as well as other unrelated issues between the parties. As BellSouth advised, it was making good faith efforts to work with Cinergy and SouthEast. Despite considerable efforts, however, BellSouth has been unable to secure executed amendments from these two remaining CLECs. Accordingly, BellSouth, unfortunately, now finds it has no choice but to seek Commission assistance to bring this process to closure with these two CLECs as well. This Commission should take action to enforce its Order as to Cinergy and SouthEast.

I. Cinergy's and SouthEast's Failure to Comply with the Commission's Order Is Unjustified.

On April 29, 2005, this Commission correctly recognized that state commissions do not have the authority to require an ILEC, such as BellSouth, to provide DSL service to an end-user customer over the same unbundled network element loop facility that a CLEC uses to provide voice services to that same customer.² The Commission's Order also, without any ambiguity, required the parties to submit, within 20 days, or by May 19, 2005, amendments to their Interconnection Agreements reflecting the Commission's decision. Six months later, Cinergy and SouthEast still have not complied with this Commission's Order.

1. Cinergy's May 23, 2005 Motion for Rehearing Does Not Excuse Its or SouthEast's Failure to Comply.

The Commission's Order of April 29, 2005 has been in effect since that time. While Cinergy sought clarification, neither Cinergy's request nor the Commission's clarification excuses the failure of Cinergy and SouthEast to execute the amendment for the past six

² As this Commission held: "to determine otherwise would be inconsistent with the Kentucky Broadband Act and with the FCC's policies." Order at 4. [Emphasis added.]

months. KRS 278.390 provides that “[e]very order entered by the commission shall continue in force until expiration of that time, if any, named by the commission, unless the order is suspended, or vacated in whole or part, by order or decree of a court of competent jurisdiction.” From April 29, 2005 until and continuing through the present, Cinergy and SouthEast have failed to execute the amendment required by the Commission’s Order.³

Furthermore, Cinergy’s May 23, 2005 Petition for Rehearing and the Commission’s June 13, 2005 denial of rehearing and grant of alternative relief do not excuse either Cinergy’s or SouthEast’s failure to comply with the Commission’s April 29, 2005 Order. It is well settled by statute and the courts of Kentucky that a motion for rehearing does not stay an order of the Commission. See KRS 278.390. As the Kentucky Supreme Court has stated, in an oft-cited quote:

It is as obvious as the acropolis of Athens that an order of the commission continues in force until revoked or modified by the commission or unless suspended or vacated in whole or in part by the Franklin Circuit Court.

Commonwealth of Kentucky ex rel. Robert F. Stephens, Attorney General, Movant v. South Central Bell Telephone Company, Respondent, 545 S.W.2d 927, 931 (Ky. 1976).

³ BellSouth has continued issuing credits to SouthEast Telephone and Cinergy until this matter is fully resolved. In the case of SouthEast Telephone, BellSouth has issued credits for DSL over UNE-P lines. In the case of Cinergy, BellSouth has continued to issue credits for all “hunt group” lines as discussed further herein. However, BellSouth recently determined that credits to Cinergy for stand-alone DSL during the last four months have not been issued. Of course, such credits, in fact, will not be due to Cinergy or SouthEast in the event the Commission orders, consistent with the Commission’s April 29, 2005 Order, that the amendment shall be effective May 19, 2005. Upon the amendment becoming effective, BellSouth will “true up” any credits or offsets as to Cinergy and SouthEast in accordance with this Commission’s orders as to the effective date of the amendment.

Cinergy's rehearing petition consisted of nothing more than "rehashed" arguments from its previous filing,⁴ which this Commission rightly rejected in its June 13, 2005 Order **denying** rehearing.

2. Cinergy's Hunting/Billing Surrogate Issue.

Cinergy's clarification request had stemmed from a potential issue involving certain unique circumstances, where lines in "hunting"⁵ groups that are associated with DSL ordinarily would have been ordered by a CLEC as UNE-P up until the time when UNE-P was no longer available for ordering, but instead were ordered as resale due to BellSouth systems issues.⁶ In the case of Cinergy, BellSouth had been supplying a credit to Cinergy for both the DSL-carrying line and the lines associated, or hunting, with those DSL lines. BellSouth confirmed in its June 2, 2005 Response to Cinergy's Petition that BellSouth would not take any action that would adversely affect CLECs impacted by this so-called "hunting/billing surrogate issue" that had resulted in non-DSL hunting group lines being provisioned as resale.

As BellSouth committed, it has treated the hunting lines associated with the lines carrying DSL as if they were UNE-P, because if not for BellSouth's systems issues, those lines would have been ordered and billed as UNE-P lines.⁷ Moreover, as BellSouth agreed, those lines impacted by this hunting/billing systems issue are being treated as part of the

⁴ See BellSouth's June 2, 2005 Response to Cinergy's Petition at 1-3.

⁵ Hunting, an optional feature predominately used with business lines, allows a call to a group of lines to overflow from one line to the next line in the group, when the originally called line is busy. See, A3.19 of KY GSST.

⁶ As this Commission is aware, due to these systems limitations, BellSouth provisioned DSL over resale lines and then credited CLECs bills for the difference between the price of the resale line and the price of a UNE-P line.

⁷ See BellSouth's June 2, 2005 Response, at 7-8.

UNE-P embedded base for purposes of the TRRO, and those lines will be subject to the TRRO transition rates.

The Commission's June 13, 2005 Order, in addition to denying Cinergy's Motion for Rehearing, discussed both Cinergy's alternative request for clarification and BellSouth's explanation of the hunting/billing surrogate issue. The Commission noted BellSouth's commitment to work with Cinergy to manually convert the lines affected by this issue. Consistent with BellSouth's offer, the Commission granted clarification that BellSouth should continue "to treat those lines which, but for the presence of DSL, would have been UNE-P in a manner that prices those at the UNE-P rates during this transition period."⁸ BellSouth is appropriately handling the hunting/billing surrogate issue. Nevertheless, Cinergy and SouthEast, two hold-out CLECs, have failed to execute the amendment to end DSL over UNE-P, as this Commission required some six months ago. BellSouth no longer is required to provide DSL over UNE-P to Cinergy or SouthEast, the two remaining CLEC's with noncompliant agreements. This Commission should order enforcement of its Order.

Cinergy's and SouthEast's continued blatant delaying tactics and refusal to comply with the Commission's April 29, 2005 Order cannot and should not be permitted to continue. Cinergy and SouthEast should immediately be required to comply with the Commission's April 29, 2005 Order.

⁸ June 13, 2005 Order, at 3.

CONCLUSION

It is time for the Commission's April 29, 2005 Order to be enforced. Accordingly, the Commission should Order that the amendment is deemed executed by both Cinergy and SouthEast, with an effective date of May 19, 2005.

Respectfully submitted,

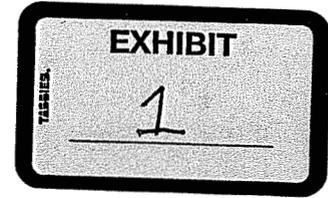


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607137



**AMENDMENT
TO THE
AGREEMENT BETWEEN
CINERGY COMMUNICATIONS COMPANY
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED MARCH 20, 2003**

Pursuant to this Amendment, (the "Amendment"), Cinergy Communications Company ("Cinergy Communications Company"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated March 20, 2003 ("Agreement").

WHEREAS, the Parties executed an agreement on March 20, 2003 to add Section 2.10.1 in Attachment 2, and;

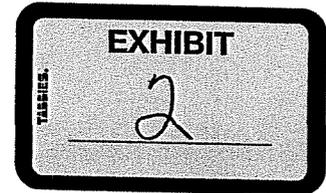
WHEREAS, the Parties desire to add provisions to the Agreement to effectuate the obligations of the Kentucky Statute KRS 278.546; Chapter 167 of the ACTS ("Kentucky Statute") and the Kentucky Public Service Commission's April 29, 2005 Order in Case No. 2004-00501 ("Kentucky Order");

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Consistent with the Kentucky Statute and the Kentucky Order, the Parties hereby delete Sections 2.10.1 through 2.10.1.8 of Attachment 2 of the Agreement, titled DSL Transport Service on UNE-P, and replace such Sections with the following:

2.10.1 Cinergy Communications Company shall not place, and BellSouth shall have no obligation to accept, any orders for wholesale DSL on UNE-P lines on or after the Effective Date hereof. To the extent Cinergy Communications Company provisions service to any End Users using BellSouth's wholesale DSL service over resold lines ("Embedded Base") and BellSouth is providing such resold lines to Cinergy Communications Company at the rate Cinergy Communications Company would otherwise pay for a UNE-P loop/port combination in the pertinent UNE Zone pursuant to Attachment 2 of this Agreement (the "UNE-P Rate"), BellSouth will continue to provision its wholesale DSL service over the resold lines in service for the Embedded Base as of the Effective Date of this Amendment but, after the Effective Date of this Amendment, Cinergy Communications Company shall pay for such resold lines in accordance with Attachment 1 of this Agreement, and BellSouth shall have no obligation to issue a credit to Cinergy Communications Company for the difference between the resale rate and the UNE-P Rate, nor shall BellSouth be obligated to remit to Cinergy Communications Company, or to issue a credit for, a surrogate for access charges. In the event Cinergy Communications Company requests wholesale DSL on a resold line after the Effective Date of this Amendment, Cinergy Communications Company shall purchase such lines pursuant to Attachment 1 of this Agreement.

2. This Amendment shall be deemed effective May 19, 2005 ("Effective Date").
3. All of the other provisions of the Agreement shall remain in full force and effect.
4. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.



**AMENDMENT
TO THE
AGREEMENT BETWEEN
SOUTHEAST TELEPHONE, INC.
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED OCTOBER 9, 2001**

Pursuant to this Amendment, (the "Amendment"), SouthEast Telephone, Inc. ("SouthEast"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated October 9, 2001 ("Agreement").

WHEREAS, the Parties executed an amendment on May 23, 2003 to add provisions to the Agreement for the adoption of Section 2.10.1 in Attachment 2 of the Cinergy Communications Company's Interconnection Agreement dated March 20, 2003, for the state of Kentucky, and

WHEREAS, the Parties desire to add provisions to the Agreement consistent with the obligations of the Kentucky Statute KRS 278.546; Chapter 167 of the ACTS ("Kentucky Statute") and the Kentucky Public Service Commission's April 29, 2005 Order in Case No. 2004-00501 ("Kentucky Order");

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Consistent with the Kentucky Statute and the Kentucky Order, the Parties hereby delete Sections 2.14.5 through 2.14.5.8 of Attachment 2 of the Agreement, titled DSL Transport Service on UNE-P, and replace such Sections with the following:

2.14.5 SouthEast shall not place, and BellSouth shall have no obligation to accept, any orders for wholesale DSL on UNE-P lines on or after the Effective Date hereof. To the extent SouthEast provisions service to any End Users using BellSouth's wholesale DSL service over resold lines ("Embedded Base") and BellSouth is providing such resold lines to SouthEast at the rate SouthEast would otherwise pay for a UNE-P loop/port combination in the pertinent UNE Zone under this Agreement (the "UNE-P Rate"), BellSouth will continue to provision its wholesale DSL service to the Embedded Base, but after the Effective Date SouthEast shall pay for such resold lines in accordance with Attachment 1 of the Agreement, and BellSouth shall have no obligation to issue a credit to SouthEast for the difference between the resale rate and the UNE-P Rate, nor shall BellSouth be obligated to remit to SouthEast, or to issue a credit for, a surrogate for access charges. In the event SouthEast requests DSL on a resold line after the Effective Date, SouthEast shall purchase such lines pursuant to Attachment 1 of the Party's Interconnection Agreement.

2. This Amendment shall be deemed effective May 19, 2005 ("Effective Date").

3. All of the other provisions of the Agreement shall remain in full force and effect.
4. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties have executed this Amendment the day and year written below.

BellSouth Telecommunications, Inc.

SouthEast Telephone, Inc.

By: _____

By: _____

Name: Kristen Rowe _____

Name: _____

Title: Director _____

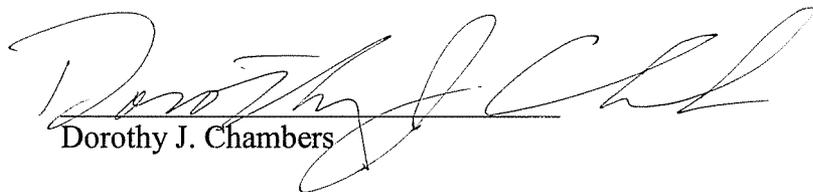
Title: _____

Date: _____

Date: _____

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct cop of the foregoing was served on the individuals on the attached service list by mailing a copy thereof, this 14th day of November, 2005.


Dorothy J. Chambers

SERVICE LIST – PSC 2004-00501

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